

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SCOTT ROBERT SEVERIN,

Defendant-Appellee.

UNPUBLISHED

July 14, 2000

No. 222204

Saginaw Circuit Court

LC No. 97-014351-FH

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

After burning a cross on the front lawn of an African-American family, defendant pled guilty to ethnic intimidation, MCL 750.147b; MSA 28.344(2), and placing an offensive substance with the intent to alarm, MCL 750.209; MSA 28.406. He was sentenced, as a third habitual offender, MCL 769.11; MSA 28.1083, to terms of thirty-one days' imprisonment and four to eight years' imprisonment. Defendant subsequently filed an emergency motion for resentencing. In lieu of resentencing, the trial court set aside defendant's guilty pleas. The prosecutor now appeals by leave granted. We reverse.

The prosecutor argues that the trial court erred by setting aside defendant's guilty pleas. We agree. We review a trial court's decision to set aside a guilty plea after sentencing for an abuse of discretion that results in a miscarriage of justice. *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997). An abuse of discretion occurs when an unbiased person, considering the facts upon which the trial court relied, would conclude that there was no justification or excuse for the decision. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

A defendant's guilty plea will not be set aside if it was knowingly, intelligently, and voluntarily given. *People v Gonzalez*, 197 Mich App 385, 391; 496 NW2d 312 (1992). To be constitutionally valid, a plea must be voluntary, with knowledge of its consequences. *People v Schluter*, 204 Mich App 60, 66; 514 NW2d 489. This Court has found pleas invalid where the underlying bargain is illusory. *Gonzalez, supra* at 391. If the value of the bargain is genuine, valid, and known to the defendant, the plea will be upheld. Even if there is no consideration to support a guilty plea, the plea will not be set aside if the facts indicate that it was voluntary. *Id.*

Here, defendant argued that his plea was involuntary because it was based on his belief that he was eligible for boot camp. The record does not support defendant's position. At the plea hearing, it was repeatedly emphasized that the only promise being made was that, if the trial court could not state at defendant's sentencing that it did not object to defendant being placed in the prison boot camp program, then the court would allow defendant to withdraw his guilty pleas. The trial court stated that if it turned out that defendant was not qualified for the boot camp program, "it's onward with whatever the sentence is." The record clearly shows that defendant was specifically told that he might be sentenced to serve time in prison and that he was not guaranteed placement in the boot camp program. Furthermore, the trial court advised defendant and his counsel that, if defendant was not eligible for the boot camp program, in the trial court's own words, "that will be too bad for him." In keeping with the agreement, at defendant's sentencing, the trial court was able to state that it did not object to defendant being placed in the boot camp program. We are convinced that defendant's guilty pleas were knowingly, intelligently, and voluntarily given, with full knowledge of their potential consequences, and that the underlying bargain was not illusory. *Schluter, supra* at 66; *Gonzalez, supra* at 391.

Further, as the prosecutor notes, defendant's motion was not timely. The trial court, aware that relief was not permitted under MCR 6.429, treated defendant's motion as if it were brought under subchapter 6.500 of the Michigan Court Rules. MCR 6.311(A); *People v Ward*, 459 Mich 602, 614; 594 NW2d 47 (1999). Relief under MCR 6.508(D), however, is also precluded where, as here, the defendant's motion for relief from judgment alleges grounds which could have been raised on appeal or in a prior motion, absent good cause and actual prejudice. MCR 6.508(D)(3); *People v Carpentier*, 446 Mich 19, 27; 521 NW2d 195 (1994). No actual prejudice or good cause were established in this case. Defendant's sentences were valid and, as stated previously, no defect existed in defendant's plea proceeding to render his pleas involuntary. Moreover, defendant did not show and does not allege that he was actually innocent of the offenses charged. Indeed, sentencing concerns were the only motivation for defendant's challenge. The trial court erred by granting relief under subchapter 6.500 of the Michigan Court Rules and abused its discretion by allowing defendant to withdraw his guilty pleas.

Reversed and remanded for reinstatement of defendant's convictions and sentences.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer